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10/567,392	02/07/2006	Hendrikus G. Van Horck	US030271	3903

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EXAMINER

TRAN, TRANG U

ART UNIT	PAPER NUMBER
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2622

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,392	Applicant(s) VAN HORCK, HENDRIKUS G.	
	Examiner Trang U. Tran	Art Unit 2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-17 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent¹ and recent Federal Circuit decisions² indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim recites a series of steps or acts to be performed, the claim neither transforms underlying subject matter nor positively ties to another statutory category that accomplishes the claimed method steps, and therefore does not qualify as a statutory process. For example the method for processing an information including steps of receiving and assigning is of sufficient breadth that it would be reasonably interpreted as a series of steps completely performed mentally, verbally or without a machine. **The Applicant has provided no explicit and deliberate definitions of "receiving", or "assigning" to limit the steps of processing the information with a machine. *In re Bilski*.** These steps of claims 1-17 are performed without a machine.

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5-6, 9-16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipate by Marnix Vlot (W0 01/28093 A1).

In considering claim 1, Marnix Vlot discloses all the claimed subject matter, note 1) the claimed receiving at least one domestic digital data transmission (100) and at least one foreign digital data transmission (110) is met by the receiving all transmissions channel (Figs. 1-3, page 10, lines 3-27), 2) the claimed wherein the at least one domestic digital data transmission and the at least one foreign digital data transmission include logical channel number data for channels of programs therein is met by the logical channel number which transmits with the channel (Figs. 1-3, page 7, lines 4-26), 3) the claimed assigning channel numbers for the channels of programs in the at least one domestic digital data transmission according to the logical channel number data therein is met by the assign the logical channel number (Figs. 1-3, page 11, lines 1-33), and 4) the claimed assigning channel numbers for the channels of programs in the at least one foreign digital data transmission that are in a higher range than the channel numbers for the channels of programs in the at least one domestic digital data transmission is met by the foreign services will get higher numbers in the list of program locations (Figs. 1-3, page 4, lines 26-34 and page 10, lines 17-32).

In considering claim 2, Marnix Vlot discloses all the claimed subject matter, note 1) the claimed wherein: the receiving at least one domestic digital data transmission comprises receiving a plurality of domestic digital data transmissions of the same digital data service from different transmitters, and the plurality of domestic digital data transmissions include logical channel number data for channels of programs therein is met by the receiving all transmissions channel (Figs. 1-3, page 2, lines 4-10 and page 7, lines 4-34), and the assigning channel numbers for the channels of programs in the at least one domestic digital data transmission comprises assigning channel numbers according to the logical channel number data included in a particular one of the plurality of domestic digital data transmissions that has a strongest service, among the plurality of domestic digital data transmissions, for the channels of programs therein is met by the receiver check which of the signal of existing and the new service, respectively, have the higher signal strength (Figs. 1-3, page 11, lines 4-29).

In considering claim 3, the claimed wherein: the particular one of the plurality of domestic digital data transmissions has the strongest service when its quality alone is highest among the plurality of domestic digital data transmissions; and the particular one of the domestic digital data transmissions has the strongest service when its signal strength alone is highest among at least two of the plurality of domestic digital data transmissions that have the same highest quality is met by the receiver check which of the signal of existing and the new service, respectively, have the higher signal strength (Figs. 1-3, page 11, lines 4-29).

In considering claim 5, the claimed wherein: the channel numbers for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service are grouped in at least one group, and are in a higher range than the channel numbers for the channels of programs in the particular one of the domestic digital data transmissions that has the strongest service is met by the step 111 where it moves the existing service in the group of regional variants (Fig. 2A, page 11, lines 4-19).

In considering claim 6, the claimed wherein: the channel numbers for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service are grouped in a plurality of groups in order of decreasing service strength is met by the step 110 where it moves the new service in the group of regional variants (Fig. 2A, page 11, lines 4-19).

In considering claim 7, the claimed wherein: the channel numbers for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service are assigned according to a sorted order is met by the step 110 where it moves the new service in the group of regional variants (Fig. 2A, page 11, lines 4-19).

In considering claim 9, Marnix Vlot discloses all the claimed subject matter, note 1) the claimed wherein: the receiving at least one foreign digital data transmission comprises receiving a plurality of foreign digital data transmissions that each include logical channel number data for channels of programs therein is met by the logical

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channel number which transmits with the channel (Figs. 1-3, page 7, lines 4-26), 2) the claimed assigning channel numbers for the channels of programs in the at least one foreign digital data transmission comprises assigning channel numbers for channels of programs in the plurality of foreign digital data transmissions is met by the assignment of service to channel (Fig. 1, page 10, lines 3-23), and 3) the claimed the channel numbers for the channels of programs in the plurality of foreign digital data transmissions are grouped in respective groups, and are in a higher range than the channel numbers for the channels of programs in the at least one domestic digital data transmission is met by the step 106 which placed in a group of foreign services (Fig. 1, page 4, lines 26-34 and page 10, lines 3-32).

In considering claim 10, the claimed wherein: the channel numbers for the channels of programs in the at least one foreign digital data transmission are assigned according to a sorted order is met by the receiving all transmissions channel (page 4, line 30 to page 5, line 29).

In considering claim 11, the claimed wherein: the at least one domestic digital data transmission and at least one foreign digital data transmission comprise at least one of audio and video data is met by the receiving all transmissions channel (page 3, lines 11-19).

In considering claim 12, the claimed wherein: the at least one domestic digital data transmission and at least one foreign digital data transmission are provided in at least one of respective broadcasts, multicasts and streaming content is met by the digital broadcast system (page 3, lines 11-19).

In considering claim 13, Marnix Vlot discloses all the claimed subject matter, note 1) the claimed receiving a plurality of domestic digital data transmissions of digital data services with different regional content is met by the receiving all transmissions channel (Figs. 1-3, page 9, lines 1-24), 2) the claimed wherein the plurality of domestic digital data transmissions include logical channel number data for channels of programs therein is met by the logical channel number (Figs. 1-3, page 2, lines 4-10 and page 7, lines 4-34), 3) the claimed determining a particular one of the plurality of domestic digital data transmissions that has the strongest service is met by , 4) the claimed assigning channel numbers for the channels of programs in the particular one of the domestic digital data transmissions that has the strongest service, according to the logical channel number data therein is met by the receiver check which of the signal of existing and the new service, respectively, have the higher signal strength (Figs. 1-3, page 11, lines 4-29), and 4) the claimed assigning channel numbers, for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service, that are grouped in at least one group, and that are in a higher range than the channel numbers for identifying the channels of programs in the particular one of the domestic digital data transmissions that has the strongest service is met by the step 111 where it moves the existing service in the group of regional variants (Fig. 2A, page 7, lines 18-26 and page 11, lines 4-19).

Claim 14 is rejected for the same reason as discussed in claim 6 above.

Claim 15 is rejected for the same reason as discussed in claim 7 above.

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Claim 16 is rejected for the same reason as discussed in claim 3 above.

Claim 18 is rejected for the same reason as discussed in claim 1 above.

Claim 19 is rejected for the same reason as discussed in claim 13 above.

Claim 20 is rejected for the same reason as discussed in claim 1 above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marnix Vlot (W0 01/28093 A1).

In considering claim 4, Marnix Vlot discloses all the limitations of the instant invention as discussed in claims 1-2 above, except for providing the claimed wherein: the particular one of the plurality of domestic digital data transmissions has the strongest service when its frequency is highest among at least two of the plurality of domestic digital data transmissions that have the same highest quality and the same highest signal strength. The capability of using the strongest service when its frequency is highest among at least two of the plurality of domestic digital data transmissions is old and well known in the art. Therefore, the Official Notice is taken. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to incorporate the old and well known using of the strongest service when its frequency is highest among at least two of the plurality of domestic digital data transmissions into

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Marnix Vlot's system in order to accurately detecting the strongest service of the digital video signal.

In considering claim 8, Marnix Vlot discloses all the limitations of the instant invention as discussed in claims 1-2 above, except for providing the claimed wherein: the channel numbers for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service precede the channel numbers for the channels of programs in the at least one foreign digital data transmission. The capability of using the channel numbers for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service precede the channel numbers for the channels of programs in the at least one foreign digital data transmission is old and well known in the art. Therefore, the Official Notice is taken. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to incorporate the old and well known using of the channel numbers for the channels of programs in the plurality of domestic digital data transmissions other than the particular one of the domestic digital data transmissions that has the strongest service precede the channel numbers for the channels of programs in the at least one foreign digital data transmission into Marnix Vlot's system in order to allow the regional service of the user to be placed at a convenient place in the list of program locations.

Claim 17 is rejected for the same reason as discussed in claim 4 above.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kim (US Patent No. 5,844,633) discloses channel memory device and the method therefor.

Ishikawa et al. (US Patent No. 5,315,392) disclose apparatus for display and selection of available television channels.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trang U. Tran whose telephone number is (571) 272-7358. The examiner can normally be reached on 9:00 AM - 6:30 PM, Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 03, 2009

/Trang U. Tran/
Primary Examiner, Art Unit 2622